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**MAR 12 2007**

**OFFICE OF PETITIONS**

In re Application of	:	
David Mc Clure	:	
Application No. 10/783,935	:	DECISION ON PETITION
Filed: 02-20-2004	:	
Attorney Docket No. 28940-00172USPT	:	

This is a decision on the petition filed September 22, 2006, and resubmitted on February 15, 2007, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

On May 2, 2006, the Office mailed a Notice of Allowance and Fee(s) Due, which set a three-month statutory period for reply. In the absence of a timely filed reply, the Office held the application abandoned and mailed a Notice of Abandonment on September 13, 2006.

Petitioner asserted that he timely paid the issue fee and publication fee in response to the Notice of Allowance. With the present petition, petitioner submitted a copy of the previously mailed reply in the form of a Transmittal Letter and Part B – Fee(s) Transmittal For, bearing a certificate of mailing dated August 1, 2006, as well as a copy of cancelled check number 312132 dated July 27, 2006, in the amount of \$1,715.00 for payment of the issue fee, publication fee, and advanced order of five copies. Additionally, petitioner provided a copy of the return postcard with a USPTO date-stamp of August 7, 2006.

Pursuant to 37 CFR 1.8(b):

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is

dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to file a timely reply to the Notice of Allowance of May 2, 2006, is withdrawn and the application is restored to pending status.

The Office finance records indicate that the \$1,715.00 check was processed by the USPTO on August 8, 2006; however, the money was applied to an incorrect application number. The Office will transfer the \$1,715.00 payment to the present application.

This matter is being referred to the Office of Patent Publication for issuance of a patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3211. Telephone inquiries concerning the issuance of the application into a patent should be directed to the Office of Patent Publication, Customer Service at (571) 272-4200.

*Christina Tartera Donnell*

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